

Application Serial No. 10/657,583
Reply to Office Action dated August 8, 2006

REMARKS/ARGUMENTS

Initially, the Applicant would like to thank the Examiner for taking the time to discuss the outstanding Office Action with the Applicant's representative during the telephone interview conducted on September 7, 2006. The Applicant would also like to thank the Examiner for the early indication of allowable subject matter, specifically that claims 3, 4 and 32 are allowed and that claims 7 and 9 are objected to but would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.

On page 2 of the Office Action, the Examiner outlined a series of rejections under 35 U.S.C. § 112, second paragraph. More specifically, the Examiner indicated that, in claims 1, 3, 4 and 32, the phrase "pivot shaft pivotally connected to a frame" is indefinite. The Examiner considers that the pivot shafts in fact rotate rather than pivot relative to the frame. During the interview, the Applicant agreed to amend the aforementioned claims to replace the term "pivotally" with the term "rotatably". The Examiner also indicated that the phrase "as it passes" presented in claims 1, 3, 4 and 32 lacks proper antecedent basis as no device for moving the insert passed the fingers has been set forth in the claims. As the Examiner was not giving the phrase any patentable weight, it was agreed that the phrase would simply be deleted from the claims.

During the interview, the Applicant's representative and the Examiner also discussed the § 102 rejection to claims 1 and 2 as being anticipated by Budde et al. The Examiner agreed with the Applicant's representative that Budde et al. does not include first and second folder fingers that are pivotally connected to and extend substantially perpendicular from the first and second pivot shafts. However, the Examiner desired the claims to be amended to more clearly set forth this arrangement. Accordingly, it was agreed that claim 1 would be amended to utilize the language set forth above in order to patentably define the invention over the prior art reference to Budde et al. In addition, claim 1 was amended in a manner commensurate with allowed claims 3 and 4 with respect to the first and second lever arm recitations.

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Regarding the rejections to claims 5, 11 and 15, it became apparent during the interview that the Examiner was not giving any patentable weight to the phrase "taco shells" employed by the Applicant thereby allowing the Examiner to apply numerous prior art references which are completely unrelated to the packaging of taco shells. The Applicant agreed during the interview to amend the aforementioned claims to employ means-plus-function language which would require any applied prior art to include structure associated with taco shells. To this end, claim 5 has been amended to recite means for retaining a nested group of taco shells; claim 11 has been amended to introduce means for transporting taco shells; and claim 15 now recites means for holding a nested group of taco shells. The Examiner agreed that such amendments would patentably define the invention over the prior art of record.

Based on the above remarks and amendments to the claims, it is respectfully submitted that the present invention is patentably defined over the prior art of record such that allowance of all claims and passage of the application to issue are respectfully requested. Please note that the Applicant is arranging for new formal drawings to be filed in this case in the relatively near future. In any event, if the Examiner should have any additional questions or concerns regarding this matter, he is cordially invited to contact the undersigned at the number provided below in order to further expedite prosecution.

Respectfully submitted,



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